

2300-892-1 PROFESSIONAL LIABILITY

INSURANCE FOR NIH EMPLOYEES

Release Date: 07/15/98

and OD-RELATED POLICIES*

(*The OD policies are marked by the blue colored text.)

A. Purpose: Section 636 of the Omnibus Spending Law of 1996 authorizes agencies to use funds appropriated for salaries and expenses to pay an amount not to exceed one-half the costs for eligible employees who elect to purchase professional liability insurance. This chapter states the policy and procedures for ICs sharing up to half of the cost of professional liability insurance purchased by eligible NIH managers, supervisors and law enforcement officers.

B. Policy: ICs are authorized to reimburse eligible employees for up to one half of the cost of professional liability insurance up to a maximum of \$500 per year per employee. ICs are responsible for setting their own policies on whether to reimburse part of the cost of professional liability insurance for eligible employees, and if so, the amount of the payment they will share.

1. By law, organizations may reimburse up to half of the cost of professional liability insurance for eligible employees, however, ICs may decide to reimburse less than half of the cost of the premiums for these insurance policies. For example, an IC may decide that if eligible employees purchase insurance, the IC will only pay a maximum of 30 percent of the cost of insurance or \$200, whichever is less. However, under no circumstances may an IC pay more than 50 percent of the cost of professional liability insurance or \$500, whichever is the lower amount.

2. Once ICs establish their reimbursement policies, they must apply their policies in an equal and uniform manner to all eligible employees.

3. ICs must also determine the minimum and maximum period of insurance coverage that they will accept for cost-sharing purposes. For example, an IC may decide that it will only share the cost of policies that run for a minimum of one year and a maximum of two years. These policies will determine how frequently employees and the IC will be required to pay for insurance coverage.

OD: The Office of the Director (OD) will reimburse each qualified employee for one-half of the insurance policy costs or \$500 per year, whichever is the lowest amount. OD will share the costs of policies that run for a minimum of one year and a maximum of two years per policy. Eligible employees who purchased professional liability insurance between the time the Omnibus Spending Law became effective for Fiscal Year 1997 and the time this policy came into effect may seek partial reimbursement of the insurance costs in accordance with the procedures described in this policy. Funds for professional liability insurance will not be centrally funded by OD and must be provided for by the individual program areas.

C. Coverage: The statute specifies that employees are eligible for the reimbursement of professional liability insurance if they meet the definition of supervisor, management official and law enforcement officer.

D. Definitions: The terms referred to in this statute have the following specific meanings:

1. **Professional Liability Insurance** means insurance which provides coverage for:

a. "Legal liability for damages due to injuries to other persons, damage to their property, or other damage or loss to such other persons (including the expenses of litigation and settlement) resulting from or arising out of any tortious act, error, or omission of the covered individual (whether common law, statutory, or constitutional) while in the performance of such individual's official duties as a qualified [eligible] employee; and"

b. "The cost of legal representation for the covered individual in connection with any administrative or judicial proceeding (including any investigation or disciplinary proceeding) relating to any act, error, or omission of the covered individual's official duties as a qualified [eligible] employee, and other legal costs and fees relating to any such administrative or judicial proceeding."

2. **Supervisors and Management Officials** have the respective meanings given them by section 7103(a) of Title 5. This section defines these terms as follows:

a. Supervisors are "... individuals employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgement, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority."

b. Management Officials are "...individuals employed by the agency in positions the duties and responsibilities of which require or authorize the individuals to formulate, determine, or influence the policies of the agency."

3. **Law Enforcement Officers** are "... employees, the duties of whose positions are primarily the investigation, apprehension, prosecution, or detention of individuals suspected of, or convicted of offenses against the criminal laws of the United States, including employees engaged in these activities who are transferred to supervisory or administrative positions or whose positions involve the protection of officials of the United States against threats to personal safety."

4. **Eligible Employees** are employees who may be reimbursed for up to half of the cost of professional liability insurance or \$500, whichever is the lower amount, provided they meet the definitions contained in paragraphs D.2 and 3 above.

Note: PHS Commissioned Officers are eligible for reimbursement for the purchase of professional liability insurance, if they meet the definitions provided in paragraph D 2 above.

E. Considerations: Eligible employees must make personal judgements concerning their liability and need for the coverage and purchase of personal liability insurance. Employees may consult with the staff of the Office of General Counsel at NIH for information that might assist them in reaching their decisions.

F. Procedures for Obtaining Professional Liability Insurance: ICs will adhere to the following procedures to reimburse the partial cost of professional liability insurance for eligible IC employees:

1. ICs will identify at least two different officials to handle different aspects of the reimbursement process.

a) The first or certifying official will be responsible for determining employee eligibility for reimbursement.

b) The second or payment official will authorize reimbursement of the designated amount to the employee upon presentation of adequate documentation of purchase of the insurance by employees.

2. Employees who want to purchase professional liability insurance must contact their IC official responsible for determining their eligibility for partial reimbursement for the purchase of professional liability insurance. The IC certifying official will make the determination based on whether employees meet the definitions in this instruction. If this official seeks reimbursement for professional liability insurance, his/her eligibility must be made by a higher ranking IC official. The certifying official also informs employees of the IC of the policy on the amount of reimbursement that the IC will authorize for the reimbursement of professional liability insurance. This official also notifies the IC payment official of which employees have been certified as eligible for reimbursement for professional liability insurance policies. To keep a record of these decisions, the certifying official will sign completed vouchers before they are sent to the Office of Financial Management (OFM) for payment.

OD employees are responsible for contacting their servicing Administrative Officer to determine their eligibility for reimbursement if they are interested in purchasing professional liability insurance.

Two different OD officials, a certifying and a payment official will handle the reimbursement process, as indicated below:

1) The servicing Administrative Officer (AO) will serve as Certifying Official and will determine and certify that an employee is eligible for policy reimbursement by signing the completed voucher. The AO will notify the Program Manager that an employee has been certified as eligible to receive reimbursement.

2) The OD Personnel Officer will serve as the payment official (IC Approving Official). After the AO has certified, the voucher will be forwarded through the appropriate Business Management Servicing Office (BMSO) to the OD Personnel Officer. The OD Personnel Officer will sign the voucher to authorize policy premium reimbursement upon presentation of adequate documentation of policy purchase by the employee. The BMSO will inform the AO and employee of the amount that OD will authorize for reimbursement. The OD Personnel Officer will maintain a copy of the signed voucher for record keeping purposes.

3. Eligible employees are responsible for finding insurers and negotiating insurance policies and extensions. They are also responsible for assuring that their insurance policies do not lapse. Finally, employees are responsible for paying insurance premiums and obtaining the information needed to show proof of purchase of insurance policies so that reimbursements can be made. Proof of purchase will include:

- a) a copy of the insurance bill in the employee's name, indicating that it is for professional liability insurance, the period of the policy, the full amount of the policy, and
- b) a paid receipt for the full cost of the insurance. If a check is used as the paid receipt, a copy of both sides of the canceled check is required.

4. IC officials will assist employees to locate insurance carriers by informing employees of companies from whom other employees have purchased policies.

OD employees should contact their servicing AO for information on possible insurance carriers.

5. Employees who purchase insurance must present proof of purchase to their IC payment official. If all documentation is proper, the payment official will approve for reimbursement an [SF-1034](#), "Public Voucher for Purchases and Services Other Than Personal." See Appendix 1 for specific instructions on the use of the SF-1034. In addition, the Office of Financial Management should be consulted on the process for reimbursement.

6. Employees are also responsible for purchasing extensions to insurance policies to avoid breaks or gaps in coverage. Renewals and extensions of professional liability insurance policies will follow the same procedure as the initial purchase. Employees must be certified as still meeting the legal definition to be eligible for reimbursements.

G. Management Controls:

1. Office Responsible for Reviewing Management Controls Relative to this Chapter (Issuing Office)

Through this issuance, the Office of Human Resource Management (OHRM) with input from the Office of Financial Management (OFM), Office of the Director, (OD), NIH is accountable for the method used to ensure that management controls are implemented and working.

2. Frequency of Review: Once every five years.

3. Method of Review: The review will consist of drawing a sample of cases from the entire population of employees purchasing professional liability insurance, and checking to determine if: the proper procedures were followed, IC policies were applied consistently, there was a proper separation of responsibility for determining eligibility and allocating funds for policies, and assuring that the IC did not pay more than one half of the cost of professional life insurance policies or exceed the IC limit on reimbursements or \$500.

4. Review Reports are sent to the Deputy Director for Management, NIH.

H. Records Retention and Disposal: All records (**e-mail** and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743, "Keeping and Destroying Records, Appendix 1, *NIH Records Control Schedule*," Item 2300-293-2.

NIH e-mail messages. NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. ***These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.***

All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to members of Congress or Congressional committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are sometimes retained for significant periods of time, e-mail messages and attachments may be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.